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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

AVANTI EZZANI-KOTUN,

Plaintiff,

v.

CITY OF INGLEWOOD, et al.,

Defendants.

Case No. CV 12-9920-MMM (OP)

ORDER RE: DISMISSAL OF CIVIL
RIGHTS COMPLAINT FOR FAILURE
TO PROSECUTE

I.

PROCEEDINGS

On December 7, 2012, Avanti Ezzani-Kotun (“Plaintiff”) filed a *pro se* Civil Rights Complaint (“Complaint”) pursuant to 42 U.S.C. § 1983. (ECF No. 3.) On February 21, 2013, the City of Inglewood and Inglewood Police Department (collectively “Defendants”) filed an Answer to the Complaint. (ECF No. 8.) On March 13, 2013, the Court issued its Order Re: Discovery and Motions. (ECF No. 10.)

On November 5, 2013, Defendants filed a Motion for Summary Judgment (“MSJ”), along with supporting declarations and exhibits, and a separate Statement of Uncontroverted Facts and Conclusions of Law. (ECF No. 14.) On November 8, 2013, the Court issued a notice to Plaintiff pursuant to Rand v. Rowland, 154 F.3d 952, 961 n.8 (9th Cir. 1998), Klinge v. Eikenberry, 849 F.2d 409, 411-12 (9th Cir. 1988), and T.W.

1 Elec. Serv., Inc., v. Pac. Elec. Contractors Assoc., 809 F.2d 626, 630-31 (9th Cir. 1987).

2 At that time, Plaintiff was given until December 13, 2013, to file an Opposition to
3 Defendants' MSJ. (ECF No. 15.)

4 On November 29, 2013, Plaintiff requested an extension of time to file his
5 Opposition. (ECF No. 16.) On December 6, 2013, the Court granted Plaintiff's request
6 for an extension and allowed him until January 10, 2014, to file an Opposition. (ECF No.
7 17.) On January 21, 2014, Plaintiff's copy of the December 6, 2013, order was returned
8 undelivered. (ECF No. 18.) On January 29, 2014, the Court issued an order allowing
9 Plaintiff until February 28, 2014, to file an Opposition to the MSJ, informing Plaintiff of
10 his obligation to notify the Court of his current mailing address, and cautioning him that
11 failure to file an Opposition to the MSJ may be deemed consent to the granting of the
12 motion. (ECF No. 19.) Plaintiff did not file an Opposition to the MSJ.

13 On March 7, 2014, the Court issued its Report and Recommendation of United
14 States Magistrate Judge ("Report and Recommendation"), recommending that
15 Defendant's Motion to Dismiss be granted and that Judgment be entered dismissing the
16 Complaint with prejudice. (ECF Nos. 20, 21.) The Report and Recommendation was
17 send to Plaintiff's previous address at the California Rehabilitation Center in Norco.
18 However, on November 29, 2013, Plaintiff informed the Court of his new address at the
19 RJ Donovan Correctional Facility, 480 Alta Road, San Diego, California 92179. (ECF
20 No. 16.) As a result, the Court re-sent the Notice of Filing, the Report and
21 Recommendation, and an Amended Notice of Filing to Plaintiff at RJ Donovan. (ECF
22 No. 20-22.) On March 25 and 27, 2014, the aforementioned documents were returned to
23 the Court as undeliverable with the notation "RETURN TO SENDER-Inactive-2/13/14-
24 Discharged." (ECF Nos. 23-26.) To date, Plaintiff has not provided the Court with his
25 current address and has not otherwise communicated with the Court.

26 The Local Rules of this Court provide in pertinent part that:

27 **Dismissal - Failure of Pro Se Plaintiff to Keep Court Apprised**
28 **of Current Address.** A party proceeding *pro se* shall keep the

1 Court and opposing parties apprised of such party's current
2 address and telephone number, if any, and e-mail address, if any.

3 If mail directed by the Clerk to a pro se plaintiff's address of
4 record is returned undelivered by the Postal Service, and if, within
5 fifteen (15) days of the service date, such plaintiff fails to notify,
6 in writing, the Court and opposing parties of said plaintiff's
7 current address, the Court may dismiss the action with or without
8 prejudice for want of prosecution.

9 C.D. Cal. R. 41-6.

10 For the reasons set forth below, the Court finds that dismissal of this action is
11 warranted for failure to prosecute.

12 II.

13 DISCUSSION

14 It is well established that a district court has authority to dismiss a plaintiff's action
15 because of his or her failure to prosecute or to comply with court orders. See Fed. R. Civ.
16 P. 41(b); Link v. Wabash Railroad Co., 370 U.S. 626, 629-30, 82 S. Ct. 1386, 8 L. Ed. 2d
17 734 (1962) (holding that a court's authority to dismiss for lack of prosecution is
18 necessary to prevent undue delays in the disposition of pending cases and to avoid
19 congestion in the calendars of the district courts); Ferdik v. Bonzelet, 963 F.2d 1258,
20 1260 (9th Cir. 1992) (holding that a district court may dismiss an action for failure to
21 comply with any order of the court).

22 Here, Plaintiff has failed to notify the Court of his current address within fifteen
23 days of the service date of the undelivered notices described above as required by Local
24 Rule 41-6. His failure to keep the Court apprised of his current address renders this case
25 indistinguishable from Carey v. King, 856 F.2d 1439, 1441 (9th Cir. 1988). There, in
26 affirming the district court's dismissal of a case for failure to prosecute, the Ninth Circuit
27 observed that "[i]t would be absurd to require the district court to hold a case in abeyance
28 indefinitely just because it is unable, through the plaintiff's own fault, to contact the

1 plaintiff to determine if his reasons for not prosecuting his lawsuit are reasonable or not.”
2 Id.

3 In Carey, the Ninth Circuit cited the following factors as relevant to the district
4 court's determination of whether dismissal of a pro se plaintiff's action is warranted: “(1)
5 the public's interest in expeditious resolution of litigation; (2) the court's need to manage
6 its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring
7 disposition of cases on their merits, and (5) the availability of less drastic sanctions.”
8 Carey, 856 F.2d at 1440.

9 Here, Plaintiff has failed to provide the Court with his current address and has not
10 otherwise communicated with the Court. Plaintiff's conduct indicates that he does not
11 intend to litigate this action diligently. Thus, these facts weigh in favor of dismissal.

12 Next, a rebuttable presumption of prejudice to defendants arises when a plaintiff
13 unreasonably delays prosecution of an action. See In re Eisen, 31 F.3d 1447, 1452-53
14 (9th Cir. 1994). Nothing suggests that such a presumption is unwarranted here. Thus,
15 the third factor also weighs in favor of dismissal.

16 It is a plaintiff's responsibility to move a case toward a disposition at a reasonable
17 pace and to avoid dilatory and evasive tactics. See Morris v. Morgan Stanley Co., 942
18 F.2d 648, 652 (9th Cir. 1991). By failing to provide the Court with his current address,
19 Plaintiff has not discharged this responsibility. In these circumstances, the public policy
20 favoring resolution of disputes on the merits does not outweigh Plaintiff's failure to
21 provide the Court with his current address. Thus, the fourth factor weighs in favor of
22 dismissal.

23 Finally, the Court attempted to avoid dismissal by re-sending the Report and
24 Recommendation to Plaintiff's most recent address. However, the mail was returned
25 indicating that Plaintiff was discharged from custody on February 13, 2014. Plaintiff has
26 not informed the Court of his current address and has not otherwise communicated with
27 the Court. Thus, the fifth factor weighs in favor of dismissal.

28 Based on the foregoing, the Court finds that dismissal of this action is warranted

1 for failure to prosecute.

2 **III.**


3 **ORDER**

4 IT IS THEREFORE ORDERED that the Complaint is hereby dismissed without
5 prejudice for failure to prosecute, and Judgment shall be entered accordingly.

6
7 DATED: May 24, 2014


8 HONORABLE MARGARET M. MORROW
9 United States District Judge

10 Presented by:

11 
12 HONORABLE OSWALD PARADA
13 United States Magistrate Judge